

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re INACOM CORP., *et al.*,

Bankruptcy Case No. 00-2426 (PJW)

INACOM CORP., on behalf of all affiliated
Debtors,¹

Plaintiff,

v.

TECH DATA CORPORATION,
Defendant.

Civil Action No. 04-148 (GMS)

[Adversary Proc. No. 02-3496 (PJW)]

AND RELATED THIRD PARTY ACTION

**DECLARATION OF JEFFREY P. NOLAN IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT TECH DATA CORPORATION AND LEXMARK
INTERNATIONAL, INC.'S JOINT MOTION IN AID OF LITIGANTS' RIGHTS
SEEKING REMEDIES FOR PLAINTIFF INACOM CORPORATION'S LATE
PRODUCTION OF CERTAIN DISCOVERY MATERIALS**

I, Jeffrey P. Nolan, declare as follows:

1. I am an attorney at law licensed to practice in the State of California. I am a lawyer at Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., counsel for Plaintiff, The Unsecured Creditors Committee ("Plaintiff" or, the "Committee"), in the above referenced matter. I make this declaration in opposition to the above-referenced Motion. I have personal knowledge of each of the matters set forth herein, and if called as a witness, I could and would testify correctly and competently as to the truth of all said matters.

¹ The Debtors are the following entities: InaCom Corp.; InaCom Latin America; InaCom Solutions, Inc.; InaCom Communications, Inc.; InaComp Financial Services, Inc.; Perigee Communications, Inc.; Networks, Inc.; Gorham Clark, Inc.; InaCom International, Inc.; InaCom Tennessee, Inc.; InaCom Professional Services, Inc.; Kure Associates, Inc.; Office Products of Minnesota, Inc.; Boston Computer Exchange Corporation; PC Technical Services, Inc.; Vanstar Corporation; Computerland International Development, Inc.; Computerport World Trade, Inc.; Vanstar International Corporation; VST West, Inc.; VST Illinois, Inc.; VSTNC, Inc.; Cland Tex, Inc.; InaCom Government Systems, Inc.; Contract Data, Inc.; Computer Professionals, Inc.; Vanstar Professional Technical Resources, Inc.

2. Attached hereto as Exhibit A is a true and correct copy of the document attached to the e-mail from counsel for Inacom on July 13, 2005, which is the subject of the Motion as Defendants claim it was never produced previously in the litigation.

3. Attached hereto as Exhibit B is a true and correct copy of the Asset Purchase Schedule, Accounts Payable produced to the Defendants as evidenced by the bates-stamped number ICN 09129.

4. Attached hereto as Exhibit C is a true and correct copy of Asset Purchase Schedules, Accounts Payable produced by Hewlett Packard as evidenced by the bates-stamped tab of HP/TD 0153 which this office received from counsel for Third Party Defendant, Hewlett Packard in the course of the litigation.

5. Attached hereto as Exhibit D is a true and correct copy of portions of the Oral Deposition of Lazarus Krikorian, taken on January 7, 2005.

6. Attached hereto as Exhibit E is a true and correct copy of portions of the Oral Deposition of Gerald A. Gagliardi, taken on April 6, 2005.

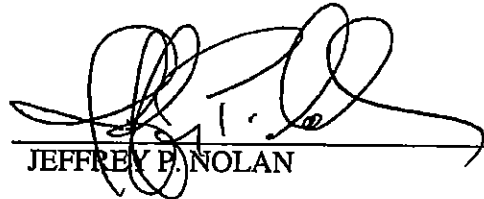
7. Attached hereto as Exhibit F is a true and correct copy of portions of the Deposition of Richard Charles Oshlo, Jr., taken March 20, 2005.

8. Attached hereto as Exhibit G is a true and correct copy of portions of the Deposition of Richard Whalen, taken on July 28, 2005.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: August 24, 2005

By



JEFFREY P. NOLAN

EXHIBIT A

Inacom Corp
Asset Purchase Schedules
Accounts Payable
As of February 12, 2000

	Amount
	<u>Per Detail</u>
Distribution Operations -trade a/p	108,901
Distribution Operations -po accrual	95,465
Reseller Division	34
BCE Division	3,314
Total	<u>207,714</u>
"Select/Delete" supplier on Dist/Ops Trade A/P	(947) Supplier # 99999 - used to track fedwires already paid
Non-compaq major vendor a/p	(73,694) HP, IBM, Dell, TOS
Lucent a/p	(8,882)
Total Adjusment	<u>(83,523)</u>
Net Accounts Payable	<u>124,191</u>
Deposits made to Compaq for inventory	(45,276)
Pre-payments made on Compaq	(980)
Total	<u>(46,256)</u>
	-
	-
	-
	-
	-
	-
	-
	-
	-
Total accounts payable per asset schedule	<u>77,935</u>

EXHIBIT B

Inacom Corp
Asset Purchase Schedules
Accounts Payable
As of February 12, 2000

008820

	Amount Per Detail
Distribution Operations -trade a/p	108,901
Distribution Operations -po accrual	95,465
Reseller Division	34
BCE Division	3,314
Total	207,714

"Select/Delete" supplier on Dist/Ops Trade A/P
 Non-compaq major vendor a/p
 Lucent a/p
 Total Adjustment

(947)	Supplier # 99999 - used to track fedwires already paid
(73,694)	HP, IBM, Dell, TOS
(8,882)	
(83,523)	
Total	124,191

Net Accounts Payable

Deposits made to Compaq for inventory
 Pre-payments made on Compaq

(45,276)
(980)
Total
(46,256)

Total

Total accounts payable per asset schedule

77,935

1,671
 1,671

81,277

Δ By HP #

was account
 & On Balance

ICN 09129

EXHIBIT C

Inacom Corp

Asset Purchase Schedules

Accounts Payable

As of February 12, 2008

	<u>Amount</u>	
	<u>-Per Detail-</u>	
Distribution Operations -trade a/p	108,901	page 417-2157
Distribution Operations-po accrual	95,465	
Reseller Division	34	page 2174-2176
BCE Division	3,314	
Total	<u>207,714</u>	
"Select/Delete" supplier on Dist/Ops Trade A/P	(947)	Supplier # 99999 - used to track fedwires already paid
Non-compaq major vendor a/p	(73,694)	HP, IBM, Dell, TOS
Lucent a/p	(8,882)	
Total Adjustment	<u>(83,523)</u>	
Net Accounts Payable	<u>124,191</u>	
Deposits made to Compaq for inventory	(45,276)	
Pre-payments made on Compaq	(980)	
Total	<u>(46,256)</u>	
	----- -- -- -- -- -- -- -- -- -- ----- =====	
Total accounts payable per asset schedule	<u>77,935</u>	

HP/7D 0153

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

In re INACOM CORP., et al.	) Chapter 11
Debtors	) Bankruptcy Case No.
	) 00-2426 (PJW)
INACOM CORP., et al.)
v.	) Civil Action No.
TECH DATA CORPORATION	) 04-CV-148 (GMS)
)
INACOM CORP., et al.)
v.	) Civil Action No.
INGRAM MICRO INC.	) 04-CV-580 (GMS)
)
INACOM CORP., et al.)
v.	) Civil Action No.
DELL COMPUTER CORP.	) 04-CV-582 (GMS)
)
INACOM CORP., et al.)
v.	) Civil Action No.
LEXMARK INTERNATIONAL, INC.	) 04-CV-583 (GMS)
)
INACOM CORP., et al.)
v.	) Civil Action No.
RESILIEN, INC.	) 04-CV-584 (GMS)
)
INACOM CORP., et al.)
v.	) Civil Action No.
INGRAM ENTERTAINMENT INC.	) 04-CV-593 (GMS)

ORAL DEPOSITION OF

LAZARUS KRIKORIAN

January 7, 2005

COPY

FREDERICKS-CARROLL REPORTING & LITIGATION SERVICES, INC.

7719 Wood Hollow Drive ♦ Suite 156 ♦ Austin, Texas 78731	♦ (800) 234-3376	♦ (512) 477-9911	♦ (512) 345-1417 Fax
9 Greenway Plaza ♦ Suite 3112 ♦ Houston, TX 77046	♦ (800) 234-3376	♦ (713) 572-8897	♦ (512) 345-1417 Fax
909 N.E. Loop 410 ♦ Suite 810 ♦ San Antonio, TX 78209	♦ (800) 767-9161	♦ (210) 222-9161	♦ (210) 225-1476 Fax

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

In re INACOM CORP., et al.) Chapter 11
Debtors) Bankruptcy Case No.
00-2426 (PJW)

INACOM CORP., et al.)
Plaintiffs)
v.) Civil Action No.
TECH DATA CORPORATION) 04-CV-148 (GMS)
Defendant)

INACOM CORP., et al.)
Plaintiffs)
v.) Civil Action No.
INGRAM MICRO INC.) 04-CV-580 (GMS)
Defendant)

INACOM CORP., et al.)
Plaintiffs)
v.) Civil Action No.
DELL COMPUTER CORP.) 04-CV-582 (GMS)
Defendant)

INACOM CORP., et al.)
Plaintiffs)
v.) Civil Action No.
LEXMARK INTERNATIONAL, INC.) 04-CV-583 (GMS)
Defendant)

INACOM CORP., et al.)
Plaintiffs)
v.) Civil Action No.
RESILIEN, INC.) 04-CV-584 (GMS)
Defendant)

1
2 INACOM CORP., et al.
Plaintiff

3 v.

4 INGRAM ENTERTAINMENT INC.
Defendant

)
)
) Civil Action No.
) 04-CV-593 (GMS)
)
)
)

6
7
8 * - * - * - *
9

10 ORAL DEPOSITION OF LAZARUS KRIKORIAN
11
12

13 On the 7th day of January, 2005, between
14 the hours of 9:05 a.m. and 12:40 p.m., at the Wyndham
15 Valley Forge Hotel, 888 Chesterbrook Boulevard, Wayne,
16 Pennsylvania, before me, CYNTHIA VOHLKEN, a Certified
17 Shorthand Reporter for the State of Texas, appeared
18 LAZARUS KRIKORIAN, who, being by me first duly sworn,
19 gave an oral deposition at the instance of the
20 Defendant Tech Data Corporation in said cause,
21 pursuant to the Federal Rules of Civil Procedure.
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFF INACOM CORP.:

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Pachulski, Stang, Ziehl, Young,
Jones & Weintraub
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Los Angeles, California 90067-4100

FOR THE EXECUTIVE SOUNDING BOARD ASSOCIATION, INC. AS
PLAN ADMINISTRATOR:

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-and-

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FOR THE DEFENDANT TECH DATA CORPORATION:

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Hughes & Luce, LLP
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Suite 900
Austin, Texas 78701

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897
SAN ANTONIO (210) 222-9161

1 Q. Did that ever change over the time that you
2 were working at InaCom?

3 A. In the post-petition period, you know, Tom
4 Fitzpatrick left and I sort of reported up through
5 Bridge Associates in a -- in a -- in a manner, sure.

08:19

6 Q. Would you identify which function Bridge
7 Associates had with respect to InaCom during the
8 post-petition period?

9 A. The way I look at it is they administered the
10 whole -- the whole post-petition process of -- of the
11 estate of income, protecting -- you know, protecting
12 and trying to collect as much assets as possible for
13 the estate for the future use of creditors.

08:20

14 Q. Were you involved with the advance planning
15 for the sale of the hardware business to Compaq?

08:20

16 A. No.

17 Q. At some point since you joined the company
18 prior to the closing did you have any involvement with
19 the sale?

20 A. No.

08:20

21 Q. Isn't it true that at one point prior to the
22 bankruptcy proceeding there was some consideration
23 regarding the sale of the servicing business to
24 CompuCom?

25 A. Yes.

08:20

1 Q. Were you involved in any way with the
2 discussions regarding that proposed sale?

3 A. No, not directly. I was involved in a manner
4 such that, you know, I was working with KPMG to
5 facilitate getting audited financials complete for the 08:21
6 1999 year, which obviously CompuCom would need in
7 the -- in the subsequent SEC filing.

8 Q. Was it in connection with the CompuCom sale
9 that you discovered a substantial footing error with
10 some reporting? 08:21

11 A. No. It had nothing to do with the CompuCom
12 sale.

13 Q. What did that have to do with?

14 A. It's just, you know, I discovered footing and
15 other mechanical and accounting errors in rebate -- in 08:21
16 the rebate receivables area and I believe it was late
17 February/early March and it was just in the -- in the
18 course of trying to complete the audit.

19 Q. In functioning as controller of InaCom did
20 you directly interact with any subordinates of the 08:22
21 company?

22 A. My subordinates?

23 Q. Yes.

24 A. Sure.

25 Q. Please explain for me the types of people 08:22

1 recall Chris' last name were involved with service
2 forecasts for the company in that -- during that time
3 period.

4 Q. In your position as controller would you have
5 typically reviewed service revenue forecasts? 11:02

6 A. Not in the circumstances in which I was
7 operating under, no.

8 Q. Were you aware that there had been a downward
9 revision to the service revenue forecasts for the
10 second quarter of 2000 from those which were 11:02
11 originally projected?

12 MR. ABBOTT: I'm going to object to the
13 form.

14 MR. CAINE: Object no foundation.

15 A. No. 11:02

16 Q. (BY MR. HUNT) Mr. Krikorian, do you know how
17 far the proposed sale to CompuCom proceeded before it
18 was determined it would not happen?

19 A. I believe it proceeded very far. And at the
20 end it's my understanding that the deal didn't go 11:03
21 through because company management in KPMG could not
22 assure -- safeguard that the -- could not assure them
23 exactly when audited financials would be delivered.

24 Q. Did that also have an impact in CompuCom
25 being unable to state an 8-K as required by the SEC 11:03

1 for that closing?

2 A. I'm sorry, can you repeat the question?

3 Q. Did that result in CompuCom not being able to
4 state an 8-K for that proposed closing as would have
5 been required by the SEC?

11:03

6 MR. CAINE: Objection, vague and
7 ambiguous.

8 A. Well, the deal was never consummated, so why
9 would an 8-K be filed?

10 Q. (BY MR. HUNT) Okay. Would you agree that
11 the deal preceded far enough that it would have closed
12 but for the issues that you mentioned regarding KPMG?

11:04

13 A. That's my understanding.

14 Q. Would you agree that the reasons that the
15 CompuCom deal did not close were unrelated to the
16 financial conditions of InaCom?

11:04

17 MR. CAINE: Objection, vague and
18 ambiguous.

19 A. I don't know.

20 Q. (BY MR. HUNT) Do you recall how far into
21 calendar year 2000 the sale discussions continued with
22 CompuCom before the deal was -- before the deal was
23 settled?

11:04

24 A. My understanding, discussions proceeded
25 either up to a couple days before the actual filing

11:05

1 such a report?

2 A. I don't recall.

3 Q. From the time that you joined InaCom in
4 January 2000 through the end of April of 2000 would
5 you agree that InaCom was conducting its remaining
6 business operations in the ordinary course?

11:10

7 MR. CAINE: Objection, vague and
8 ambiguous.

9 MR. ABBOTT: Object to the form of the
10 question.

11:11

11 A. To the best of my knowledge it was.
12 Obviously it was dealing with a lot of obstacles, but
13 yes.

14 Q. (BY MR. HUNT) Would you agree it was
15 operating as an entity that was a going concern as
16 opposed to one that was ready to close the doors in
17 the near future?

11:11

18 MR. CAINE: Hang on a second. I'll use
19 your object as to form.

20 MR. ABBOTT: I will do that one.

21 MR. CAINE: So many problems with it.

22 A. I think everybody was doing their best --
23 doing their best from an operational standpoint.

24 Q. (BY MR. HUNT) Were you aware of any other
25 entities besides CompuCom that expressed an interest

11:12

1 the commingled funds.

2 Q. Do you know what the liquidity or the
3 borrowing authority InaCom had in April 2001?

4 A. No.

5 Q. If it was in the range of 89,681,203, would
6 that have provided sufficiently liquidity for InaCom?

12:11

7 MR. ABBOTT: I'll object to the form of
8 the question.

9 A. I don't know.

10 Q. (BY MS. STREUSAND) Do you know the amount
11 that InaCom agreed in terms -- in terms of the muddled
12 receivables, do you know in April 2000 if that number
13 was quantified?

12:11

14 A. I don't know that there was a -- I don't know
15 that there was any finalization on that number, no.
16 I'm not aware that there was.

12:12

17 Q. Later in time do you know what that number
18 was finalized to?

19 A. No, I don't.

20 Q. Do you know the sales price that was agreed
21 to between CompuCom and InaCom?

12:12

22 A. No, I don't.

23 Q. Do you have any idea of the range?

24 A. I don't.

25 Q. Did you provide financial information to

12:13

1 CompuCom in order to help facilitate that sale?

2 A. I'm sure I probably did.

3 Q. Okay. Can you identify what type of
4 documents you provided to help facilitate that sale?

5 A. I don't recall what they would have been. 12:13

6 Q. Were there forecasts of revenues from the
7 service business provided or prepared by Bank Group in
8 let's just say March or April of 2000?

9 A. I believe so.

10 Q. Do you have any memory of what those
11 forecasts showed? 12:14

12 A. I do not.

13 Q. Do you know where they would have been kept
14 in the files of InaCom?

15 A. I do not. 12:14

16 MS. STREUSAND: I also make the same
17 request of either Blank Rome or Pachulski, if those
18 documents can be identified or if you want to give us
19 the index we'll try and determine where those are.

20 MR. HUNT: Join. 12:14

21 MR. CAINE: Okay.

22 MS. STREUSAND: And to further clarify,
23 I do think it's part of our overall document request,
24 but I notice as the witness is going forward these
25 documents are getting more specific, but we do have 12:15

1 about KPMG as working with InaCom on the financials
2 for '99 and '98 and you also had stated previously
3 that Deloitte & Touche was also working with InaCom.
4 What relationship did Deloitte & Touche have with
5 InaCom versus KPMG's role?

12:18

6 A. Immediately prior to the bankruptcy filing,
7 to the best of my recollection Deloitte & Touche had
8 two primary roles. One was assisting me with
9 gathering the information that would be required for a
10 bankruptcy filing. The other one was working with Tom
11 as it related to the -- I believe bank -- bank
12 related, treasury related issues and matters.

12:18

13 Q. Do you know when Deloitte was retained by
14 InaCom?

15 A. I believe it was in May 2000.

12:19

16 Q. Back to the CompuCom transaction. The
17 business that was to be sold to CompuCom, was it
18 intended to be what I would call a continuing
19 business, a business that would remain intact or was
20 it going to be liquidated by CompuCom?

12:19

21 MR. CAINE: Objection, no foundation.

22 A. To the best of my knowledge, it was a
23 business that would have continued. CompuCom would
24 have continued to service the InaCom customers.

25 Q. (BY MS. STREUSAND) And the InaCom employees

12:20

1 would continue to have jobs, correct?

2 A. I assume so. Most of them, I assume, you
3 know, just like any other merger of two giants,
4 there's always sort of a re-sizing that takes place,
5 but yeah.

12:20

6 Q. But InaCom's remaining business fundamentally
7 was a service business, correct?

8 A. That's correct.

9 Q. And so if CompuCom was interested in buying
10 it, it was to buy what I would call the brain power
11 from the InaCom business, correct?

12:20

12 A. Right.

13 Q. Would goodwill have been included as part of
14 the purchase price that InaCom was going to sell that
15 business to CompuCom?

12:21

16 MR. CAINE: Objection, no foundation,
17 calls for speculation.

18 MR. ABBOTT: I object to the form, but
19 you can answer.

20 A. Uh-huh. The answer to that question depends
21 on what the sales price was in comparison to what the
22 net assets acquired were.

12:21

23 Q. (BY MS. STREUSAND) And you don't know?

24 A. (Shakes head negatively). I don't have that
25 information.

12:21

EXHIBIT E

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re
INACOM CORP., et al. Bankruptcy Case No. 00-2426 PJW

INACOM CORP., on behalf :
of all affiliated Debtors, : Civil Action No. 04-148 GMS
Plaintiff, : (Original filed in this Action)
v. : Adversary Case No. 02-03496 PJW
TECH DATA CORP., :
Defendant. :

COPY

INACOM CORP., on behalf of :
all affiliated Debtors, :
Plaintiff, : Civil Action No. 04-582 GMS
v. : Adversary Case No. 02-03499 PJW
DELL COMPUTER CORPORATION, :
Defendant. :

INACOM CORP., on behalf of :
all affiliated Debtors, :
Plaintiff, : Civil Action No. 04-583 GMS
v. : Adversary Case No. 02-03500 PJW
LEXMARK INTERNATIONAL, INC., :
Defendant. :

DEPOSITION OF RICHARD CHARLES OSHLO, JR.,
March 20, 2005

KATHRYN POWERS- CERTIFIED SHORTHAND REPORTER

INACOM CORP., on behalf of
all affiliated Debtors,

Plaintiff,

v.

RESILIEEN, INC., et al.,

Defendant.

Civil Action No. 04-584 GMS

Adversary Case No. 02-03501 PJW

INACOM CORP., on behalf of
all affiliated Debtors,

Plaintiff,

v.

INGRAM ENTERTAINMENT, INC.,
Successor in interest to
NASHVILLE COMPUTER
LIQUIDATORS,

Defendant.

Civil Action No. 04-593-GMS

Adversary Case No. 02-03960 PJW

INACOM CORP., on behalf of
all affiliated Debtors,

Plaintiff,

v.

SIGMA DATA, INC,

Defendant.

Civil Action No. 04-601 GMS

Adversary Case No. 02-04441 PJW

DEPOSITION OF RICHARD CHARLES OSHLO, JR.,

taken by the Defendants before Kathryn Powers, Certified
Shorthand Reporter of the State of Iowa, at the Renaissance
Savery Hotel, Room 210, Des Moines, Iowa, commencing at
9:45 a.m., Sunday, March 20, 2005.

1 APPEARANCES:

2 For InaCom Corp.:

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20 For Third-Party
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21 Packard, Successor in
Interest to Compaq
22 Computer:

GAIL S. GREENWOOD, ESQ.
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24 Also Present:
(by telephone)

Jason Fensterstock
Duff & Phelps

I N D E XWITNESSPAGE

Richard Charles Oshlo, Jr.

Examination By Ms. Streusand

6

Examination by Mr. Halliday

132

Examination by Mr. Hunt

168

Examination By Mr. Nolan

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Examination by Ms. Greenwood

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Examination by Mr. Nolan

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Examination by Mr. Forte

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Examination by Ms. Streusand

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Examination by Mr. Halliday

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Examination by Mr. Hunt

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E X H I B I T SEXHIBITSMARKED

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P R O C E E D I N G S

MS. STREUSAND: Would you please swear
the witness.

ROBERT CHARLES OSHLO, JR.,
called as a witness by the Defendants, being first
duly sworn by the Certified Shorthand Reporter,
was examined and testified as follows:

EXAMINATION

BY MS. STREUSAND:

Q. Good morning, Mr. Oshlo. We met just
briefly a moment ago. Let me reintroduce myself.
I'm Sabrina Streusand. Along with James Landon,
we represent Dell, Inc., in an adversary
proceeding brought by InaCom.

Can you please state your full name for
the record.

A. Richard Charles Oshlo, Jr.

Q. And your address, sir, please?

A. 3818 Lincoln Place Drive, Des Moines,
Iowa, 50312.

Q. And have you had your deposition taken
before, sir?

A. Yes.

Q. How many times?

A. Probably about five times.

1 A. No.

2 Q. Did you work on a proposed purchase of
3 business units with CompuCom and InaCom?

4 A. The only thing I know about CompuCom is a
5 conversation I had with Tom Fitzpatrick, probably
6 the Wednesday, middle of the week, before we laid
7 off that Friday numerous employees.

8 Q. That would have been June of 2000, sir?

9 A. I forget when, but he told me that--and I
10 think a couple other individuals in the Omaha
11 finance office, that they had been trying to sell
12 something to CompuCom, and that it failed, and
13 that as of that Friday they were going to lay off
14 most of the employees of InaCom and an X number of
15 us would, you know, stay around until God knows
16 what.

17 Q. And did you know any details with respect
18 to the transaction of CompuCom?

19 A. No. I just knew--that was the first I
20 heard of it, and that it had failed.

21 Q. And I'm sorry, I know you've told me
22 this, but when did you leave InaCom?

23 A. September 2000.

24 Q. 2000. Several months after the
25 bankruptcy proceeding?

EXHIBIT F

COPY

GERALD A. GAGLIARDI

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

In re: : CHAPTER 11
INACOM CORP., et al., : BANKRUPTCY CASE
Debtors : NO. 00-2426(PJW)

INACOM CORP., et al. : CIVIL ACTION
-vs- :
TECH DATA CORPORATION : NO. 04-CV-148(GMS)

INACOM CORP., et al. : CIVIL ACTION
-vs- :
DELL COMPUTER CORP. : NO. 04-CV-582(GMS)

INACOM CORP., et al. : CIVIL ACTION
-vs- :
LEXMARK INTERNATIONAL, INC. : NO. 04-CV-583(GMS)

INACOM CORP., et al. : CIVIL ACTION
-vs- :
RESILIEN, INC. : NO. 04-CV-584(GMS)

INACOM CORP., et al. : CIVIL ACTION
-vs- :
INGRAM ENTERTAINMENT, INC. : NO. 04-CV-593(GMS)

Oral deposition of GERALD A. GAGLIARDI,
was taken pursuant to notice, held at BLANK ROME,
LLP, One Logan Square, 18th & Cherry Streets,
Philadelphia, Pennsylvania, commencing at 9:33 a.m.
on April 6, 2005, before April J. Foga, Certified
Shorthand Reporter and Notary Public, there being
present:

ZANARAS REPORTING AND VIDEO
REGISTERED PROFESSIONAL REPORTERS
1616 Walnut St., Ste. 300 2112 Bay Avenue
Philadelphia, PA 19103 Ocean City, NJ 08226
(215) 790-7857 1-877-GO-DEPOS

DISK
ENCLOSED

GERALD A. GAGLIARDI

Page 2

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Counsel for Executive Sounding Board Associates,
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21 (Appearance Page continued on Page 3.)
22
23
24

GERALD A. GAGLIARDI

Page 3

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24

GERALD A. GAGLIARDI

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1 damaging. The fact that at the 99th hour when
2 we were trying to sell the assets to Compucom
3 and had a deal and Safeguard Scientific said
4 they couldn't allow the transaction to happen
5 because it was going to affect their tax
6 position. Compucom was happy with the
7 transaction and the fact that there were no
8 financials. Safeguard Scientific wouldn't let
9 us honor the contract or wouldn't let them do
10 the contract. Otherwise, we could have
11 packaged the thing and we could have saved the
12 5,000 jobs that got taken and none of us would
13 have ever met each other.

14 So I can give you a whole host -- I
15 called it a cesspool a while ago. It was the
16 worst situation I have ever seen in my 30 some
17 odd years of corporate experience. I've
18 worked in an environment at Unysis where we
19 actually had prepared for bankruptcy some
20 years ago. This was a completely different
21 situation. This was misinformation,
22 misrepresentation, people not carrying out
23 things they said they were going to do for us.
24 It was nothing -- the worst mess I've seen in

GERALD A. GAGLIARDI

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1 certain law facilities were actually paid off and
2 closed as a result of monies received from the Compaq
3 closing?

4 A. I believe so.

5 Q. Do you recall sitting here today which
6 ones would have been satisfied?

7 A. I recall that there was one with IBM
8 and I don't recall the others. I know that bank one
9 was redone. Those are the ones -- I can remember the
10 IBM one because it was a sticky thing at the very end
11 of it. We couldn't find the person to sign the
12 document, so they had to agree before we could close
13 and then they would then get their money shot off to
14 them, so --

15 Q. It sounds to me, Mr. Gagliardi, from
16 the way you described it that the Compucom sale had
17 proceeded fairly well along; is that correct?

18 A. Yes.

19 Q. Do you know what remained to be done in
20 order to close that?

21 A. There was a list of -- as we went down
22 through the period, there was a list of things that
23 had to get done in terms of which employees, which
24 services, which this, which -- you know, commitments

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1 amongst everyone, the banks, Compucom, ourselves.
2 And we had pretty much ticked our way through all of
3 them. I can't recall which ones in particular needed
4 to be finished, but we were on a path to close the
5 deal and were actively working to get it done by a
6 certain day in that week, the week that we ended up
7 closing the doors. And there had been an open issue
8 about this getting financial statements which we did
9 not believe -- it was listed, but it wasn't listed on
10 the critical path and all of a sudden it appeared out
11 of nowhere to be on the critical path. Safeguard
12 Scientific raised their head and then Tom -- the two
13 Toms dove into that one and we were unable to resolve
14 it.

15 Q. Actually, I should jump in,
16 Mr. Gagliardi, because on a couple of occasions, you
17 referred to two Toms and I just want to make sure --

18 A. Tom Molchen and Tom Fitzpatrick.

19 Q. Thank you, sir. And your reference to
20 two Toms in the deposition would always be to those
21 gentlemen?

22 A. Yes. That's what they were constantly
23 referred to.

24 Q. Thank you. Mr. Gagliardi, do you

GERALD A. GAGLIARDI

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1 recall Mr. Fitzpatrick reporting to the board at the
2 May 1, 2000 meeting that the company was still
3 showing positive EBITDA?

4 A. No. I don't recall that.

5 Q. Did you have an expectation for the
6 revenue projections that would have been derived from
7 the cash generated through the Compucom closing if it
8 had actually taken place?

9 MR. CAINE: Can you read that back?

10 (The court reporter read back the
11 pertinent testimony.)

12 MR. CAINE: Two objections as to form
13 and no foundation.

14 THE WITNESS: I don't understand the
15 question.

16 BY MR. HUNT:

17 Q. Mr. Gagliardi, I previously shared with
18 you a letter from the Houlihan, Lokey firm that was
19 marked as an exhibit. That was exhibit GAG-3. Do
20 you have any additional recollection regarding the
21 substance of this solvency opinion letter?

22 A. No.

23 Q. Do you believe that Inacom, at the time
24 of the actual closing with Compaq, had identified to

GERALD A. GAGLIARDI

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1 BY MS. STREUSAND:

2 Q. Do you know what financial information
3 was provided to Compucom?

4 A. I know financial data was provided to
5 Compucom by Mr. Fitzpatrick --

6 Q. And --

7 A. -- and Laz.

8 Q. And do you know what type? Was it --

9 A. No. I didn't participate in those
10 meetings. They had -- there were meetings I went to
11 and there were a set of meetings between just the
12 financial folks, Tom and a woman who was the CFO at
13 that time of Compucom.

14 Q. Would balance sheets have been provided
15 to Compucom?

16 A. I don't know.

17 Q. Did you review the Houlihan, Lokey
18 solvency opinion of February 16, 2000 before the
19 close of the transaction with Compaq?

20 MR. CAINE: Objection. Asked and
21 answered.

22 THE WITNESS: I did not.

23 BY MS. STREUSAND:

24 Q. And did you work with anyone at

GERALD A. GAGLIARDI

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1 A. In the spring. Before that, I thought
2 we -- maybe we could get this thing -- maybe they
3 were actually going to do it, but when they began
4 bouncing us from Kansas City to the partners in New
5 York and we couldn't get straight answers, and we
6 actually had one come to the board meeting to tell us
7 what was going to happen and he wouldn't give the
8 board straight answers, I began to believe that there
9 was just no end to this thing.

10 Q. Do you recall when you first started
11 talking to anyone about a potential sale of the
12 service business?

13 A. Yes.

14 Q. When was that?

15 A. Right after the close -- right after
16 the transaction with Compaq was announced, a guy
17 named Pete Musser, who was with a company named
18 Safeguard Scientific called me. He was an
19 acquaintance I had had before and he -- Safeguard
20 Scientific was a principal owner in a thing call
21 Compucom and so he called me and said, Gerry, how
22 come you didn't give me a heads up you were thinking
23 about selling anything. If you guys are thinking of
24 divesting yourself of any more of those assets, we

GERALD A. GAGLIARDI

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1 month and week after week. And the way we kept it
2 going week after week was the seriousness of the
3 negotiations with Compucom.

4 Q. At some point, was a deal in principal
5 reach with Compucom?

6 A. Yes.

7 Q. What was the purpose for Inacom's
8 perspective of entering into that deal?

9 A. Really to save the jobs of the 5,000
10 people that were going to get terminated. There was
11 nothing in it for us.

12 Q. When you say there was nothing in it
13 for Inacom, what do you mean?

14 A. Well, Inacom would be in a position to
15 satisfy -- take care of its employees. Clearly the
16 stockholders were going to be left high and dry and
17 there would have been more cash to pay creditors, so
18 from a fiduciary position, we thought that it was
19 best serving our constituency than just folding the
20 place up.

21 Q. Was there cash coming to Inacom from
22 Compucom?

23 A. Yes. Yeah. There was some cash. I
24 don't recall the amount, but again, that would have

EXHIBIT G

COPY

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: INACOM CORP., et al.,

-----x
INACOM CORP., on behalf of all
affiliated Debtors,

Plaintiff,

-against-

TECH DATA CORP.,

Defendant.

Civ Act No.
04-148 GMS
Adversary No.
02-03496 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,

Plaintiff,

-against-

DELL COMPUTER CORPORATION,

Defendant.

Civ Act No.
04-582 GMS
Adversary No.
02-03499 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,

Plaintiff,

-against-

LEXMARK INTERNATIONAL, INC.,

Defendant.

Civ Act No.
04-583 GMS
Adversary No.
02-03500 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,

Plaintiff,

-against-

INGRAM ENTERTAINMENT, INC.,

successor in interest to

NASHVILLE COMPUTER LIQUIDATORS,

Defendant.

Civ Act No.
04-593 GMS
Adversary No.
02-03960 PJW

-----x
July 28, 2005

5:19 p.m.

Deposition of RICHARD A. WHALEN

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R. Whalen

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get information that was reasonable knowledge by a willing buyer as of the valuation date, and you should endeavor to get as much information as they can, but things that are put out there, published, become public or become available after the valuation date, you can't use, you can't consider them, unless you pick a new valuation date.

Q. Let's say hypothetically you have a valuation date of June 30?

A. Okay.

Q. And the most recent projection you have in order to perform your analysis, have been completed on January 1st, and those projections relied on actual data prior to January 1st?

A. And the thinking on January 1st.

Q. Right.

MR. POWELL: Which January 1st?

MR. CAINE: Of the same year.

THE WITNESS: Before.

Q. You would use those January 1st projections in preparing your valuation as of June 30?

A. Yes, or what I would try and do is update those projections, make sure they are

1 **R. Whalen**

2 Blackstone report. Would it be appropriate to
3 consider the information in the Blackstone report?

4 A. You don't need it, you already have
18:08:42 5 it. You mean that particular balance sheet and
6 those balances, current assets, \$10, fixed assets,
7 \$12.

8 Q. There may be additional data
9 underlying the balance sheet that's contained in
18:08:53 10 the Blackstone report that you don't see in the
11 balance?

12 A. I suppose if it is factual data that
13 was around on the valuation date, then I'm
14 thinking no matter where it comes from, you should
18:09:06 15 consider it. There is a difference between
16 creating a report with all the judgment that goes
17 into it, and the thinking cap on in May of 2000,
18 which is different than perhaps a thinking cap in
19 April, or March, or February. The difference
18:09:26 20 between assertions made in a report and financial
21 statement data on a page. Maybe that's where we
22 are diverging here.

23 Q. We are not, I'm just trying to
24 understand your opinion.

18:09:42 25 A. I think in general wherever you can